

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

PROMESA
Title III

Case No. 3:17-cv-03283 (LTS)
(Jointly Administered)

**JOINDER BY SERRALLES TO
THE OVERSIGHT BOARD AND BACARDI'S OPPOSITION TO
AMBACS'S MOTION FOR ENTRY OF ORDER AUTHORIZING DISCOVERY
UNDER BANKRUPTCY RULE 2004 CONCERNING PRIFA RUM TAXES**

COMES NOW Destilerias Serrales, Inc. ("Serralles"), by and through the undersigned legal counsel, and hereby files this joinder (the "Joinder") to the Financial Oversight and Management Board for Puerto Rico's (the "FOMB") *Opposition to AMBAC's Motion for Entry of Order Authorizing Discovery under Bankruptcy Rule 2004 Concerning PRIFA Rum Taxes* (the "FOMB Opposition") [ECF No. 7891] and *Bacardi International Limited's and Bacardi*

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

(continued...)

*Corporation's Objection to AMBAC Assurance Corporation Motion*² (the “Bacardi Opposition”, and jointly with the FOMB Opposition, the “Oppositions”) [ECF 7897].

1. As the FOMB correctly asserts in their opposition, the revenues from rum tax payments are distributed as follows:

- a) Pursuant to Act No. 44 of 1988 (as amended), 3 P.R. Laws Ann. § 1914, the *Puerto Rico Infrastructure Financing Authority* (“PRIFA”) will receive up to \$117 million dollars —per fiscal year— deposited by Puerto Rico Treasury Department in the Puerto Rico’s Infrastructure Fund;
- b) However, on May 5, 2015, the Commonwealth entered in a *Lockbox Agreement* with Citibank (the “Paying Agent”) and created an account (“Lockbox”) into which the U.S. government would deposit the corresponding Rum Tax Remittances established by 26 U.S.C. § 7652. *See*, Docket No. 7891-1.
- c) The *Lockbox Agreement* established a priority order through which the Paying Agent is required to disburse the Rum Tax Remittances. The priority is as follows:
 - i. The Paying Agent transfers up to \$117 million to the Puerto Rico Secretary of the Treasury for deposit to the credit of PRIFA. *Id.* at § 5(a);
 - ii. The Paying Agent will subsequently transfer additional designated amounts of Rum Tax Remittances to (i) the Puerto Rico Science & Technology Trust and (ii) the Puerto Rico Conservation Trust Fund. *Id.* at § 5(b) and 5(e); and
 - iii. Pursuant to Act No. 178 of 2010 and Executive Order No. 2012-30, the 46% of the Rum Tax Remittances in the Lockbox are transferred to Banco Popular de Puerto Rico as trustee on behalf of the Puerto Rico rum

² Capitalized terms not otherwise defined in this Joinder shall have the meaning ascribed to them in the Oppositions.

producers to maintain, promote and grow the production of rum in Puerto Rico (the “Rum Tax Incentive”). *Id.* at § 5(f).

2. Based on the above, according to the express dispositions of the *Lockbox Agreement*, (i) the first priority of distribution of the Rum Tax Remittances are to the Treasury for the benefit of PRIFA; and (ii) the Rum Tax Incentives never enters into the Commonwealth’s coffers. *See* Docket No. 7891-1.

3. Accordingly, Serrales joins the Oppositions to the following extent:

- a) The discovery sought by Ambac is overly broad, unduly burdensome, unnecessary, and exceeds the scope of Fed. R. Bankr. P. 2004 to the extent that Ambac intends to seek documentation from third-party non-debtors (such as the rum producers) concerning Rum Tax Incentives which do not enter into the Commonwealth’s operational accounts. *See* Docket No. 7891 at ¶I. B., pages 15-21 and Docket No. 7897 at pp. 6-9; and
- b) Ambac’s proposed order improperly shifts the burden to the target of discovery in contravention of Fed. R. Civ. P. 45. *See* Docket No. 7897 at pp. 9-10.

4. For all of these reasons, and those set forth in this Joinder, which Serrales adopts and incorporates by reference herein, Serrales joins the Oppositions as of the date of their filing.

5. Serrales reserves all rights and remedies with respect to the Joinder, including but not limited to, the right to raise additional arguments at the hearing.

WHEREFORE, Serrales respectfully request this Court to grant this Joinder and to enter such other relief as is just and proper.

WE HEREBY CERTIFY that on this same date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants in this case. We further certify that, on this same date, we served the foregoing upon all the Standard Parties as identified and defined the Court's CMP Order, as well as upon all of the parties identified in the Master Service List maintained at <https://cases.primeclerk.com/puertorico/>.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of July, 2019.

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